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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,139	09/16/2003	Thomas C. Burton	14288	3992

7590

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EXAMINER

DUNN, DAVID R

ART UNIT

PAPER NUMBER

3616

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/663,139

**Applicant(s)**

BURTON ET AL.

**Examiner**

David Dunn

**Art Unit**

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 14-16, 22, 25, 28-47 and 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/16/03 &amp; 5/27/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of species I in the reply filed on November 22, 2005 is acknowledged. The traversal is on the ground(s) that the "species of Figures 1-5 are closely related and should be search and considered jointly". This is not found persuasive because applicant's arguments that the classification is the same and field of search is the same is only applicable to a restriction. Applicant has recited the requirements of establishing burden from MPEP 808.02, however as noted in this section this is only relevant where the related inventions are distinct under the criteria of MPEP 806.05(c) - 806.06. This was not the case. The examiner made a requirement for an election of species under 35 U.S.C. 121, not a restriction. As noted in the form paragraph recited in previous action and also in MPEP 818.03(b), should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 6-9, 12, 14-16, 22, 25, 28-47, 50, and 52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 22, 2005.

It is noted that applicant stated that claims 6, 7, 14, 25, 27 and 52 read on the elected species. However, claims 6 and 7 recite a “flap” which is shown as element 256 in Figure 3 and 360 of Figure 4, not in the embodiment of Species I. Claims 14, 27 and 52 recite that the stiffening member is attached below the attachment tabs such as shown in Figures 4 & 5; this feature is not shown in Species I. Claim 25 recites that the attachment tabs are inserted through apertures in the stiffening member; Species I does include this feature. Therefore, these claims have been withdrawn by the examiner.

Additionally, it appears that claims 13 and 26 read on the embodiment of Species I; therefore, these claims are being examined on the merits by the examiner.

### *Drawings*

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: “362” (page 14). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Objections*

4. Claim 48 is objected to because of the following informalities: “A method for method of” should be --A method for-- or --A method of--. Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 5, 11, 48, and 49 are rejected under 35 U.S.C. 102(e) as being anticipated by Hall et al. (US 6,945,558)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Hall et al. discloses an airbag assembly comprising: an inflatable curtain (10; Figure 1); and a stiffening member (94) at the top of the curtain. The stiffening members are plastic (see column 6, lines 26-27). The stiffening member is a bar.

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7. Claims 1, 5, 10, 11, 13, 17, 21, 23, 24, 26, 48, 49, and 51 are rejected under 35

U.S.C. 102(b) as being anticipated by Urushi et al. (US 6,254,123).

Urushi et al. discloses an inflatable curtain with a stiffening member (61; see Figure 2) disposed at the top of the curtain. The stiffening member is attached via one or more mounting brackets (61B); the curtain has tabs (16D). The stiffening member is outside of the curtain (see Figures 1 & 2).

8. Claims 1, 4, 5, 48, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Webber et al. (6,152,481).

Webber et al. discloses an inflatable curtain (25) with a stiffening member (62; see Figure 2A) disposed at the top of the curtain. The stiffening member extends along the entirety of the longitudinal length of the curtain (see Figure 1).

9. Claims 1, 5, 10, 11, 17, 21, 23, 24, 26, 48, 49, and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Masuda et al. (6,626,457).

Masuda et al. discloses an inflatable curtain (10F) with a stiffening member (40; see Figure 1A, 1B, 1C, 2A) disposed at the top of the curtain.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3 and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al. alone.

Masuda et al. is discussed above but is silent on the thickness of the stiffening member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Masuda et al. to have the thickness of the stiffening member be about 1 to 3 millimeters since applicant has not disclosed that having the element at this specific thickness solves any stated problem or is for any particular purpose it appears that such a selection of thickness would involve only routine skill in the art.

12. Claims 4 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urushi et al. in view of Webber et al.

Urushi et al. is discussed above but does not clearly show the stiffening member extending the entirety of the curtain.

Webber et al. is discussed above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Urushi et al. with the teachings of Webber et al. to extend the stiffening member the entire length of the curtain in order to better support the airbag.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Dunn whose telephone number is 571-272-6670. The examiner can normally be reached on Mon-Fri, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'David Dunn', is written over a horizontal line.

David Dunn  
Primary Examiner  
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